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State/Territory Name: Maine

State Plan Amendment (SPA) #: 23-0005-B

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages



December 20, 2023

Michelle Probert, Director
Office of MaineCare Services
Department of Health and Human Services
109 Capitol Street, 11 State House Station
Augusta, ME 04333-0011

Re: Maine State Plan Amendment (SPA) 23-0005-B

Dear Director Probert:

We have reviewed the proposed amendment and accompanying section 1135 waivers to add section 7.4 Medicaid Disaster Relief for the COVID-19 National Emergency to your Medicaid state plan, as submitted on March 31, 2023, under transmittal number (TN) 23-0005-B. This amendment proposes to implement temporary policies, which are different from those policies and procedures otherwise applied under your Medicaid state plan, during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak (or any renewals thereof).

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and this state plan provision will no longer be in effect, upon termination of the public health emergency, including any extensions.

Pursuant to section 1135(b)(5) of the Act, for the period of the public health emergency, CMS is modifying the requirement at 42 C.F.R. 430.20 that the state submit SPAs related to the COVID-19 public health emergency by the final day of the quarter, to obtain a SPA effective date during the quarter, enabling SPAs submitted after the last day of the quarter to have an effective date in a previous quarter, but no earlier than the effective date of the public health emergency.

The State of Maine also requested a waiver of public notice requirements applicable to the SPA submission process. Pursuant to section 1135(b)(1)(C) of the Act, CMS is waiving public notice requirements applicable to the SPA submission process. Public notice for SPAs is required under 42 C.F.R. §447.205 for changes in statewide methods and standards for setting Medicaid payment rates, 42 C.F.R. §447.57 for changes to premiums and cost sharing, and 42 C.F.R. §440.386 for changes to Alternative Benefit Plans (ABPs). Pursuant to section 1135(b)(1)(C) of the Act, CMS is approving the state's request to waive these notice requirements otherwise applicable to SPA submissions.

The State of Maine also requested a waiver to modify the tribal consultation timeline applicable to this SPA submission process. Pursuant to section 1135(b)(5) of the Act, CMS is also allowing states to modify the timeframes associated with tribal consultation required under section 1902(a)(73) of the Act, including shortening the number of days before submission or conducting consultation after submission of the SPA.

These waivers or modifications of the requirements related to SPA submission timelines, public notice, and tribal consultation apply only with respect to SPAs that meet the following criteria: (1) the SPA provides or increases beneficiary access to items and services related to COVID-19 (such as by waiving or eliminating cost sharing, increasing payment rates or amending ABPs to add services or providers); (2) the SPA does not restrict or limit payment or services or otherwise burden beneficiaries and providers; and (3) the SPA is temporary, with a specified sunset date that is not later than the last day of the declared COVID-19 public health emergency (or any extension thereof). We nonetheless encourage states to make all relevant information about the SPA available to the public, so they are aware of the changes.

We conducted our review of your submittal according to the statutory requirements at section 1902(a) of the Act and implementing regulations. This letter is to inform you that Maine's Medicaid SPA Transmittal Number 23-0005-B is approved effective March 1, 2020.

Enclosed is a copy of the CMS-179 summary form and the approved state plan pages.

Please contact Gilson DaSilva at (617) 565-1227 or by email at Gilson.DaSilva@cms.hhs.gov if you have any questions about this approval. We appreciate the efforts of you and your staff in responding to the needs of the residents of the State of Maine and the health care community.

Sincerely,

Alissa M. Deboy -S
Digitally signed by
Alissa M. Deboy -S
Date: 2023.12.20
07:05:33 -05'00'

Alissa Mooney DeBoy
On Behalf of Anne Marie Costello, Deputy Director
Center for Medicaid and CHIP Services

Enclosures

cc: Kristin Merrill, Acting Policy Director, Office of MaineCare Services

<p>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</p> <p>FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES</p>	<p>1. TRANSMITTAL NUMBER 23 0005 - B</p>	<p>2. STATE Maine (ME)</p>
<p>TO: CENTER DIRECTOR CENTERS FOR MEDICAID & CHIP SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES</p>	<p>3. PROGRAM IDENTIFICATION: TITLE <u>XIX</u> OF THE SOCIAL SECURITY ACT</p>	
<p>5. FEDERAL STATUTE/REGULATION CITATION Title XIX, Section 1135 of the Social Security Act</p>	<p>4. PROPOSED EFFECTIVE DATE 03/01/2020</p>	
<p>7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Section 7.4 Pages 89a, 89b, 89j(0)(f), 89(j)(1) Attachment 7.7 A, 7.7 B, 7.7 C 89j(0)(b) and 89j(0)(f)(1)</p>	<p>6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)</p> <p>a. FFY <u>2020</u> \$ <u>0</u> \$3,904,143</p> <p>b. FFY <u>2021</u> \$ <u>0</u> \$10,949,676</p>	
<p>9. SUBJECT OF AMENDMENT</p> <p>Amends section 7.4 - Medicaid Disaster Relief for the COVID-19 National Emergency to provide the state additional flexibilities to address the COVID-19 pandemic.</p>		
<p>10. GOVERNOR'S REVIEW (Check One)</p> <p><input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT</p> <p><input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED</p> <p><input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL</p> <p style="text-align: right;"><input checked="" type="checkbox"/> OTHER, AS SPECIFIED:</p>		
<p>11. SIGNATURE OF STATE AGENCY OFFICIAL</p> <div style="background-color: black; width: 100px; height: 20px; margin-bottom: 5px;"></div>	<p>15. RETURN TO</p> <p>Michelle Probert Director, MaineCare Services #11 State House Station 109 Capitol Street Augusta, Maine 04333-0011</p>	
<p>12. TYPED NAME Michelle Probert</p>	<p>13. TITLE Director, MaineCare Services</p>	
<p>14. DATE SUBMITTED March 31, 2023</p>	<p>16. DATE RECEIVED 03/31/2023</p>	
FOR CMS USE ONLY		
<p>18. EFFECTIVE DATE OF APPROVED MATERIAL 03/01/2020</p>		<p>17. DATE APPROVED 12/20/2023</p>
PLAN APPROVED - ONE COPY ATTACHED		
<p>20. TYPED NAME OF APPROVING OFFICIAL Alissa Mooney DeBoy</p>	<p>19. SIGNATURE OF APPROVING OFFICIAL Alissa M. Deboy -S</p> <p style="font-size: small; text-align: right;">Digitally signed by Alissa M. Deboy -S Date: 2023.12.20 07:06:06 -05'00'</p>	
<p>22. REMARKS</p> <p>05/15/2023 - ME provided P&I authority to update fiscal impact amounts in Box 6, to update Box 7 and Box 8 with the correct SPA pages and to modify the SPA transmittal number in Box 1.</p>		

Section 7 – General Provisions

7.4. Medicaid Disaster Relief for the COVID-19 National Emergency

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

The State Medicaid agency (agency) seeks to implement the policies and procedures described below, which are different than the policies and procedures otherwise applied under the Medicaid state plan, during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak (or any renewals thereof), or for any shorter period described below:

Describe shorter period here.

NOTE: States may not elect a period longer than the Presidential or Secretarial emergency declaration (or any renewal thereof). States may not propose changes on this template that restrict or limit payment, services, or eligibility, or otherwise burden beneficiaries and providers.

Request for Waivers under Section 1135

X The agency seeks the following under section 1135(b)(1)(C) and/or section 1135(b)(5) of the Act:

- a. X SPA submission requirements – the agency requests modification of the requirement to submit the SPA by March 31, 2020, to obtain a SPA effective date during the first calendar quarter of 2020, pursuant to 42 CFR 430.20.
- b. X Public notice requirements – the agency requests waiver of public notice requirements that would otherwise be applicable to this SPA submission. These requirements may include those specified in 42 CFR 440.386 (Alternative Benefit Plans), 42 CFR 447.57(c) (premiums and cost sharing), and 42 CFR 447.205 (public notice of changes in statewide methods and standards for setting payment rates).

- c. Tribal consultation requirements – the agency requests modification of tribal consultation timelines specified in MAINE Medicaid state plan, as described below:

Please describe the modifications to the timeline.
 The State requests that the following tribal consultation be acceptable:

 Notification to all federally recognized tribes via either call OR letter only, no later than May 11, 2023 in order to obtain a first calendar quarter in 2020 effective date.

Section A – Eligibility

- 1. The agency furnishes medical assistance to the following optional groups of individuals described in section 1902(a)(10)(A)(ii) or 1902(a)(10)(c) of the Act. This may include the new optional group described at section 1902(a)(10)(A)(ii)(XXIII) and 1902(ss) of the Act providing coverage for uninsured individuals.

Include name of the optional eligibility group and applicable income and resource standard.
All uninsured individuals as defined under 1902(ss) of the Act pursuant to Section 1902(a)(10)(A)(ii)(XXIII) of the Act effective March 18, 2020.

- 2. The agency furnishes medical assistance to the following populations of individuals described in section 1902(a)(10)(A)(ii)(XX) of the Act and 42 CFR 435.218:

- a. All individuals who are described in section 1905(a)(10)(A)(ii)(XX) Income standard:

-or-

- b. Individuals described in the following categorical populations in section 1905(a) of the Act:

Income standard:

- 3. The agency applies less restrictive financial methodologies to individuals excepted from financial methodologies based on modified adjusted gross income (MAGI) as follows. Less restrictive income methodologies:

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H. Supplemental payments will be issued to the following provider types. The amounts identified below represent the total allocation per provider type. Payments to providers are allocated proportional to FFY 2021 revenue for these services as determined by the MMIS claims data distribution of MaineCare payments. Supplemental payments per provider will be distributed in equal monthly payments to eligible providers during the months of January 2022 through the earlier of either December 2022 or the end of the Federal PHE.

Provider Type	Total payment
2-Adult Family Care Services	\$270,336
17-Community Support Services	\$1,298,423
26-Day Health Services	\$50,985
28-Rehab/Comm Supp for Children	\$471,240
65-Behavioral Health	\$ 7,492,425

- N. Effective August 3, 2022, the Department will allocate a COVID-19 supplemental payment to Adult Family Care Services providers. The supplemental payment will total \$535,750. Payments to each facility will be allocated proportional to their 2019 full calendar year revenue as determined by the MMIS claims data distribution of MaineCare payments. For facilities that did not have a full 12 months of CY 2019 claims experience, the Department selected the period for each facility (CY2020, SFY2021, or CY2021) that reflected the highest revenue amount for the facility. For facilities where the CY2021 time period was selected per the criteria above, the Department determined an annualized amount based on the CY2021 claims available as of the date of the payment calculation.
- O. Effective the earlier of June 30, 2023 or upon approval of this amendment, the Department will allocate a COVID-19 supplemental payment to Adult Family Care Services providers. The supplemental payment will total \$535,750. Payments to each facility will be allocated proportional to their 2019 full calendar year revenue as determined by the MMIS claims data distribution of MaineCare payments. For facilities that did not have a full 12 months of CY 2019 claims experience, the Department selected the period for each facility (CY2020, CY2021, or CY2022) that reflected the highest revenue amount for the facility. For facilities where the CC2022 time period was selected per the criteria above, the Department determined an annualized amount based on the CY2022 claims available as of the date of the payment calculation.
- P. Effective the earlier of June 30, 2023 or upon approval of this amendment, the Department will allocate a one-time COVID-19 supplemental payment among the privately owned and operated NSGO Acute Care Non-Critical Access hospitals and Critical Access hospitals operating in the State of Maine. This supplemental payment will equal twenty-five million dollars (\$25,000,000). Of the total supplemental payment, fourteen million five hundred thousand dollars (\$14,500,000) will be allocated to inpatient services and ten million five hundred thousand dollars (\$10,500,000) will be allocated to outpatient services. Each eligible hospital's payment will be allocated proportional to the MMIS base year distribution of MaineCare payments. These payments will not exceed allowable aggregate upper payment limits. This emergency supplemental payment will not be subject to cost settlement by the Department.
- Q. The Department issued a one-time supplemental payment to Private Non-Medical Institution, Medical and Remedial Service Facilities totaling \$28,839,065. 75% of the allocation was distributed proportionally based on each facility's CY2019 MaineCare revenue for services, while the other 25% was allocated to provide greater assistance to facilities with lower occupancy rates in the second half of State Fiscal Year 2021. For facilities that did not have a full 12 months of CY2019 claims experience the Department used revenue from an alternate, more recent 12-month period to determine distribution of the supplemental payment. The Department issued this supplemental payment in two parts, the first payment totaling \$14,419,528 was issued on September 22, 2021 and the second payment totaling \$14,419,537 was issued on October 27, 2021. Facilities that were operational and serving clients as of September 1, 2021, received this supplemental payment. This supplemental payment will be reconciled at the same time as the provider's annual cost report audit. Supplemental payment is made when the total of allowable Medicaid costs exceeds the direct care pricing of services and is made at the lower of the pool amounts specified here or the difference between direct care reimbursement and total allowable Medicaid costs.
- R. The Department issued a one-time COVID-19 supplemental payment to Private Non-Medical Institution, Medical and Remedial Service Facilities totaling \$5,621,750 on August 3, 2022. 75% of the allocation was distributed proportionally based on each facility's CY2019 MaineCare revenue for these services, while the other 25% was allocated proportional to the facility's total MaineCare bed days for service dates in CY2021. For facilities that did not have a full 12 months of CY 2019 claims experience the Department used revenue from an alternate, more recent 12-month period to determine distribution of the supplemental payment amounts by facility. Facilities that were operational and serving clients as of June 1, 2022, received this supplemental payment. The supplemental payment will be reconciled at the same time as the provider's annual cost report audit. Supplemental payment is made when the total of allowable Medicaid costs exceeds the direct care pricing of services and is made at the lower of the pool amounts specified here or the difference between direct care reimbursement and total allowable Medicaid costs.

S. The Department issued a one-time COVID-19 supplemental payment to Private Non-Medical Institution, Children's Residential Care Facilities totaling \$9,171,579. Payments to providers are proportional to any reduction in utilization across services identified within HCPCs codes H0019 HE, H0019 CG, H0019 SE and H0019 U9 between calendar years 2019 and 2021. This payment was issued in two parts. \$3,347,886 was issued June 29, 2022 and \$5,823,693 million was issued December 14, 2022.

T. To supplement services provided on April 26, 2023 the Department issued a one-time supplemental payment to Private Non-Medical Institution, Medical and Remedial Service Facilities totaling \$ 5,621,750. 70% of the allocation is distributed proportionally based on each facility's CY2019 MaineCare revenue for services, 25% is proportional to facility vacancy rate, and 5% is proportional to on facility spending on contract labor. For facilities that did not have a full 12 months of CY2019 claims experience the Department used revenue from an alternate, more recent 12-month period to determine distribution of the supplemental payment. Facilities that were operational and serving clients as of March 1, 2023, are eligible to receive this supplemental payment. This supplemental payment will be reconciled at the same time as the provider's annual cost report audit. Supplemental payment is made when the total of allowable Medicaid costs exceeds the direct care pricing of services and is made at the lower of the pool amounts specified here or the difference between direct care reimbursement and total allowable Medicaid costs.

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Section 7.4

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ii. X An increase to rates as described below.

Rates are increased:

Uniformly by the following percentage:

X Through a modification to published fee schedules – effective 01/01/2023:

Effective date (enter date of change):

Location (list published location): Up to the Medicare payments for equivalent services.

X By the following factors:

A. Private Non-Medical Institution Reimbursement for Substance Abuse Treatment Facilities is increased uniformly by 23.9% effective 3/1/2020.*

Private Non Medical Institution Reimbursement for Child Care Facilities is increased uniformly by 17.2% effective 6/1/2020.*

**The Department reserves the right to cease payment of rate increases at any time, with proper provider notification, to ensure that the providers identified above do not receive duplicate reimbursement for COVID related costs in the event that other state and/or federal funding opportunities become available.*

**rate increases and supplemental pool payments will sunset at the end of the public health emergency

NOTE: The above Private Non Medical Institution payment provisions have been amended in Section 7.4.A by ME-20-0023-A effective June 1, 2020.

Effective 3/1/2020 through 5/31/2020 the following facilities will receive temporary rate increases for each bed day billed under revenue code 0940:

- Medical and Remedial Service Facilities - \$16.10
- Community Residences for Persons with Mental Illness - \$36.54

B. Private Non-Medical Institution Reimbursement

The following facilities will receive increased reimbursement rates as identified below when there has been a COVID-19 outbreak. Reimbursement is time-limited for the period the facility has a confirmed outbreak. Outbreaks of COVID-19 in congregate care facilities are defined as three cases or more within a fourteen-day period. Confirmation of an outbreak and of the end of an outbreak will be provided by the Maine Center for Disease Control (CDC) and reported to MaineCare, in alignment with federal CDC guidance. Cases include cases among both residents and staff. Maine CDC will close an outbreak once 28 days have passed with no additional cases. Subject to year end cost reconciliation.

Confirmation of an outbreak and of the end of an outbreak will be provided by the Maine Center for Disease Control (CDC) and reported to MaineCare.

- a. Private Non-Medical Institution Reimbursement for Substance Abuse Treatment Facilities is increased during outbreaks uniformly by 23.9% effective 6/1/2020
- b. Private Non-Medical Institution Reimbursement for Child Care Facilities is increased during outbreaks uniformly by 17.2% effective 6/1/2020.
- c. Private Non-Medical Institution Reimbursement for Medical and Remedial Services under revenue code 0940 is equal to an increase of \$16.10 per bed day during outbreaks.
- d. Private Non-Medical Institution Reimbursement for Community Residences for Persons with Mental Illness Services billed under revenue code 0940 is equal to an increase of \$36.54 per bed day during outbreaks.